CF0000062972

(2)

Division Bench (Criminal)

समक्ष माननीय उच्च न्यायालय, न्यायाधिकार, जबलपुर म0प्र0

दाण्डिक अपील नं0- 17 /2000

Single Bench (Criminal)

अपीलार्थी : प्रेमलाल आत्मज मिंधु मोची आयु 28 वर्ष
(जेल में) पेशा- बढ़ई, निवासी- ग्राम कोलिहापुरी
थाना- पुलगांव, जिला दुर्ग (म0प्र0)

विरूद्ध

प्रत्यार्थी : मध्य प्रदेश शासन, द्वारा आरक्षी केन्द्र
लालबाग जिला राजनांदगांव (म0प्र0)

अपराध क्र0- : 128/96

धारा : 302, 394, 376 भा0द0वि0

थाना : लालबाग (राजनांदगांव)

दाण्डिक अपील अंतर्गत धारा 374(2) दण्ड प्रक्रिया संहिता ।

Filed on 3/1/2000
by Shri S.K. Jain
Advocate

(51)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 17 of 2000

Premlal

Versus

State of Madhya Pradesh

JUDGMENT FOR CONSIDERATION

Sd/-
DHIRENDRA MISHRA
Judge

HON'BLE SHRI JUSTICE L.C. BHADOO

Sd/-
L.C.BHADOO
Judge

20/11/09/2006

POST FOR JUDGMENT ON 21st-9-2006

Sd/-
DHIRENDRA MISHRA
Judge

(52)

HIGH COURT OF CHHATTISGARH AT BILASPUR

D.B. Hon.Shri L.C. Bhadoo and
Hon.Shri Dhirendra Mishra,JJ

Cr.A. No. 17/2000

APPELLANT : Premlal

VERSUS

RESPONDENT : State of Madhya Pradesh.

Shri R.K. Jain and Smt. Kiran Jain counsel for the appellant.
Shri Akhil Mishra learned panel lawyer for the respondent.

JUDGMENT

(Delivered on 21 -9-2006)

Per Dhirendra Mishra,J

The appellant has preferred this appeal under Section 374 (2) of the Code of Criminal Procedure against the impugned judgment dated 29.10.1999 passed by Additional Sessions Judge, Rajnandgaon in Sessions Trial No. 3/1998 convicting him under sections 376, 394 and 302 of the Indian Penal Code and sentencing to undergo RI for 10 years and pay fine of Rs. 1000/- u/s 376, to undergo RI for 5 years and pay fine of Rs. 500/- u/s 394 and to undergo imprisonment for life and pay fine of Rs. 1000/- under section 302 of the IPC. In default of payment of fine he has further been sentenced to undergo RI for 6 months, 3 months and 6 months respectively. All the sentences are directed to run concurrently.

2. The case of the prosecution in brief is that on 21.2.1995 at about 2.30 p.m. deceased Purniya alias Purnima had gone to a field where the appellant after committing sexual intercourse between 3 and 6 p.m. looted her nose ring and other ornaments

and thereafter murdered her. On the basis of information of the Investigating Officer P.C. Tiwari, Merg intimation Ex. P-13 was recorded on 22.2.1995 at about 1.30 a.m. and thereafter Dehati Nalishi of Ex. P-14 was also recorded. After conducting inquest of Ex. P-1, the dead body was sent for autopsy to District Hospital, Rajnandgaon where the post mortem was conducted by a team of three doctors and the post mortem report is Ex. P-16. Memorandum of the appellant was recorded on 17.5.1997 in connection with crime No. 128/1996 vide Ex. P-5 and on the basis of information given by the appellant a silver anklet and goldsmith's register were taken into possession from one Tara Chandra Jain PW-9. Another memorandum statement of the appellant under section 27 of the Indian Evidence Act was recorded on 29.5.1997 and on the basis of information given by him a gold ring, nose ring, silver ring and one handkerchief were taken into possession vide Ex. P-10. The above articles were put to test identification by G.R. Mahipal, Naib Tehsildar PW-5 on 28.7.1997 and the same were identified by husband of the deceased namely Devanand PW-12.

3. After completing investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Rajnandgaon who in turn committed the case to the Court of Session, Rajnandgaon from where learned Additional Sessions Judge, Rajnandgaon received the case on transfer for trial.

4. Charge under sections 376, 394 and 302 of the IPC was framed against the appellant who abjured his guilt.

5. The prosecution in order to establish the charge against the appellant examined as many as 18 witnesses in all. Thereafter, statement of the accused was also recorded under Section 313 of the Code of Criminal procedure in which he denied the circumstances appearing against him in the prosecution case and pleaded his innocence and false implication in the case. However,

the Court below after hearing counsel for the parties has convicted and sentenced the accused as mentioned above.

6. Homicidal death of Purnia alias Purnima is not in dispute. Even otherwise, from the post mortem report which has been duly proved by Dr. P. Akhtar who was one of the members of the team which conducted the post mortem it was found that at the time of post mortem examination the neck of the deceased was tied by her Sari, nose was swollen and deeply congested, tongue was protruded and bitten by teeth, blood and saliva was coming out from mouth and nostrils, abrasions were present on cheek, forehead, both elbows and knees, right ribs below the stomach, posterior portion of breast extending from right scapular region to lumber region, right calf and right portion of the stomach. On examination of the neck ligature mark around the neck was spotted, first ligature mark was spotted at the thyroid bone encircling the neck in the size of 5 c.m. wide. Impression of knot was spotted on the right side and back side of the neck. The second ligature mark was above the first ligature mark which also encircled the neck and its width was 1 c.m. On internal examination blood was found in the trachea, both the lungs were found congested, dark colour blood was present in the right chamber, the left ventricle was empty and brain cells were congested. Thyroid cartilage of the neck as also the hide bone were fractured. On examination of the private parts of the deceased done by a lady doctor, mutilated wound was found over the left side of labia minora and dry blood stains were present. Vagina admitted two fingers easily, hymen was ruptured, there was no injury on the uterus and it was non gravid. After post mortem examination the doctors opined that the cause of death was asphyxia as a result of strangulation and the death was homicidal in nature. Thus on the basis of above report homicidal death is established.

7. Learned counsel for the appellant submits that there is no eyewitness to the incident and the appellant has been convicted solely on the basis of recovery of ornaments worn by the deceased on the

memorandum of the accused/appellant. He submits that the incident occurred in February 1995 whereas the first memorandum of the appellant was recorded on 17.5.1997 in connection with Crime No. 128/1996 vide Ex. P-5. However, in this memorandum also it is mentioned that the appellant made a disclosure regarding the nose ring, silver anklet and other ornaments worn by the deceased but the seizure of only melted anklet from the goldsmith PW-9 was effected on 22.5.1997 along with the goldsmith's register where an entry showing that on 11.3.1995 a pair of silver anklets weighing 200 gms was purchased from one Sunil Sahu on 11.3.1995. Thereafter on the basis of alleged memorandum dated 29.5.1997 recovery of gold nose ring, silver ring and handkerchief was made. He further submits that the witnesses to the memorandum and seizure memo have also not supported the case of the prosecution and they have turned hostile and the first memorandum recorded on 17.5.1997 does not bear the signature of the appellant. It is argued that there is no evidence available on record to connect the appellant with the crime in question except alleged recovery of the ornaments of the deceased. He further submits that from perusal of memorandum of Ex. P-5 it would be evident that information about the seized articles was allegedly given on 17.5.1997 and on the basis of this information only melted silver plate weighing 199 gms. was recovered that too from the goldsmith. Memorandum of Ex.P-5 was recorded by N.B. Singh ASI (PW-16). However, he has not stated in his deposition before the Court that the appellant gave any information about the other ornaments which were subsequently seized and put to test identification and were identified by the husband of the deceased namely Devanand. Thus the alleged memorandums dated 17.5.1997 and 29.5.1997 and the seizure on the basis of these memorandums on the face of it appear to be the cooked up documents and the appellant could not be convicted on the basis of such recovery. Articles seized are the common articles and are easily available in the market and therefore, only on the basis of identification of these ornaments and handkerchief by PW-12 Devanand that too two years after the incident, is doubtful.

8. On the other hand learned counsel for the respondent/State supports the impugned judgment of the trial Court.

9. We have heard counsel for the parties and perused the record including the judgment of the trial Court.

10. Conviction of the appellant is based on recovery of the ornaments of the deceased on the memorandum of the accused and the report of the chemical analyst wherein in the slides of the vaginal discharge, presence of human sperm has been confirmed. There was no possibility that husband of the deceased Devanand had committed sexual intercourse with the deceased just before her death as he was on fast that day. So far as the recovery of melted anklet from PW-9 Tarachandra Jain at the instance of the appellant is concerned, the person recording memorandum statement PW-16 N.B. Singh, ASI has proved this document. However, this memorandum does not bear the signature of the accused and the seizure on the basis of this memorandum is of a melted plate of silver. Witness of memorandum Seet Kumar PW-3 has admitted his signature over the document and has stated that it is a joint memorandum which was recorded at the instance of Premlal. However, he has not stated anything about the information given by the appellant which led to the recovery of the silver plate from Tarachandra Jain. Since the memorandum does not bear the signature of the appellant and recovery is only of silver plate, it was not safe for the Court below to consider the recovery on the basis of such memorandum as incriminating evidence against the appellant. After recording memorandum of Ex. P-5 another memorandum was recorded on 29.5.1997, 12 days after the first memorandum and in pursuance of this statement of the appellant, recovery of the gold nose ring, silver anklets and one handkerchief has been made. It is not in dispute that vide memorandum of Ex. P-5 recorded on 17.5.1997 alleged disclosure was already made by the appellant regarding the above articles though the police could not recover the same. Even otherwise, PW-16 N.B. Singh has not stated in his deposition before the Court that the appellant gave disclosure regarding the above

ornaments and after 12 days of the first memorandum on 29.5.1997 the alleged second memorandum has been recorded. Since the existence of seized articles on the basis of this memorandum was already known, no credence can be given to the recovery of ornaments on the basis of subsequent memorandum and therefore, the alleged identification of the seized ornaments before PW-5 G.R. Mahipal by the husband of the deceased is of no consequence. Even otherwise, it is highly improbable that the ornaments concealed in the house were recovered more than two years after the incident could be identified by the husband of the deceased in the absence of any mark of identification and it would not be safe to hold the appellant guilty solely on the basis of such memorandum and recovery except recovery of ornaments of the deceased at the instance of the accused and there is no other evidence available on record to connect the appellant with the crime in question and therefore, the Court below was not justified in convicting the appellant on the basis of above evidence and he ought to have been given the benefit of doubt.

11. In the result, the appeal is allowed. Impugned judgment of the trial Court is set aside and the appellant stands acquitted of all the charges leveled against him. He be set at liberty forthwith if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge